

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of Application of )  
 )  
MOBILE RELAY ASSOCIATES ) File No. 0001558517  
 )  
Petition For Partial Reconsideration )

**ORDER ON RECONSIDERATION**

**Adopted: January 29, 2007**

**Released: January 30, 2007**

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* On December 23, 2005, Mobile Relay Associates (MRA) filed a petition for partial reconsideration concerning the decision to dismiss the above-captioned application.<sup>1</sup> As set forth below, we deny the petition for partial reconsideration.

2. *Background.* On December 29, 2003, MRA filed an application for a Business Radio Service Station in Idaho Springs, Colorado.<sup>2</sup> In connection with this application, MRA requested waivers of (1) the Commission's freeze on 800 MHz intercategory sharing in order to permit MRA to utilize an Industrial/Land Transportation channel pair, and (2) the minimum spacing requirements of Section 90.621(b)(4) of the Commission's Rules.<sup>3</sup> On November 21, 2005, the Public Safety and Critical Infrastructure Division (Division)<sup>4</sup> of the Wireless Telecommunications Bureau issued an *Order*<sup>5</sup> dismissing the intercategory sharing waiver request as moot, and denying the short-spacing waiver request because it was not prepared in accordance with the provisions of Section 90.621(b)(4) of the Commission's Rules.<sup>6</sup> As a result, the *Order* dismissed the application pursuant to Section 1.934(d)(2) of the Commission's Rules.<sup>7</sup>

3. MRA seeks partial reconsideration of the *Order* dismissing its application. MRA asserts that its application does not contain any fatal flaws because it is signed, contains all information, schedules and required exhibits required under the Commission's Rules, was timely filed, and had the appropriate filing fee.<sup>8</sup> MRA also notes that because the application requested an authorization not in compliance with the requirements of Section 90.621(b), a waiver was requested pursuant to Section

---

<sup>1</sup> See Petition for Partial Reconsideration filed on December 23, 2005 by MRA (MRA Petition).

<sup>2</sup> See FCC File No. 0001558517 (filed Dec. 29, 2004).

<sup>3</sup> 47 C.F.R. § 90.621(b)(4).

<sup>4</sup> Pursuant to a Commission reorganization effective September 25, 2006, certain duties of the Public Safety and Critical Infrastructure Division were assumed by the Mobility Division. See Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

<sup>5</sup> Mobile Relay Associates, *Order*, 20 FCC Rcd 18231 (WTB PSCID 2005) (*Order*).

<sup>6</sup> 47 C.F.R. § 90.621(b)(4). MRA's interference analysis used the actual authorized effective radiated power (ERP) values for the incumbent stations, but the short-spacing table explicitly requires that all existing stations be assumed to operate with one thousand watts ERP. *Order*, 20 FCC Rcd at 18232 ¶ 4.

<sup>7</sup> *Order*, 20 FCC Rcd at 18232 ¶ 6; see also 47 C.F.R. § 1.924(d)(2).

<sup>8</sup> MRA Petition at 1.

90.621(b)(4) of the Commission's Rules.<sup>9</sup> As a result, MRA contends that given all this information the application does not qualify as defective under Section 1.934(d) of the Commission's Rules.<sup>10</sup>

4. *Discussion.* The Division dismissed the application pursuant to Section 1.924(d)(2), which permits dismissal without prejudice of an application that is found to be defective. Under Section 1.924(d)(2), an application is defective if it requests an authorization that would not comply with one or more of the Commission's Rules *and does not contain an alternative proposal that fully complies with the Rules*. The subject MRA application was dismissed because once the associated waiver request was denied, the application did not contain an alternative proposal that fully complied with the Rules.<sup>11</sup> As a result, we find that the application was properly dismissed because it was defective pursuant to Section 1.924(d)(2) of the Commission's Rules.

5. In support of the petition for partial reconsideration, MRA submitted a technical study purporting to show that its proposed facility, with five degrees of beam tilt to the antenna, would provide the required protection to all licensees.<sup>12</sup> We have reviewed MRA's study and conclude that it lacks sufficient technical details for us to assess whether we concur with MRA's contention. Specifically, the study does not provide specific technical details regarding the antenna pattern of the proposed facilities. Thus, there is not enough information upon which to make an objective determination as to whether the proposed facilities will provide the requisite interference protections to other affected stations.

6. Accordingly, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for partial reconsideration filed by Mobile Relay Associates, on December 29, 2004 IS DENIED.

7. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

---

<sup>9</sup> *Id.* at 1-2

<sup>10</sup> *Id.* at 2.

<sup>11</sup> We note that the short-spacing waiver request was not prepared in accordance with the provisions of Section 90.621(b)(4) of the Commission's Rules and the facilities requested in the application would have resulted in prohibited contour overlap with three licensed stations. As a result, the contour analysis submitted by MRA was found to be defective and that grant of the requested waiver was inappropriate and the application was dismissed.

<sup>12</sup> See MRA Petition at 3. We note that MRA indicates that the original application contained three degrees of beam tilt, but it did not so indicate because it is not specified in the FCC application form. We note that MRA did submit additional information as an attachment regarding other technical aspects of the proposed facilities but did not discuss the beam tilt.